

Key Questions about the New OSHA Law

What is the Purpose of the New Law? The purpose of MGL § 6-1/2 is to reduce work-related injuries and illnesses among Commonwealth employees.

Who is Covered by the New Regulation? 454 CMR 25 applies to workplaces maintained by the Commonwealth as described in M.G.L. c7 §28. The new regulation does not apply to municipalities, counties, and non-executive branch state agencies.

Covered by new Chapter 149 §6 1/2:

- Administration and Finance
- Education
- Energy and Environmental Affairs
- Health and Human Services
- Housing and Economic Development
- Labor and Workforce Development
- Mass Highway; RMV; Aeronautics
- Public Safety and Security

Covered by existing Chapter 149 §6:

- Attorney General office
- Colleges and Universities
- Legislature
- MBTA
- MWRA
- Sherriff Offices
- State Auditor
- Treasurer
- County offices
- Municipalities

When Does the Law Go Into Effect? Both MGL c149 §6-1/2 and 454 CMR 25 become effective March 24, 2015.

Who Will Enforce the Law and 454 CMR 25? The Department of Labor Standards (DLS). The program within DLS with this responsibility is the Workplace Safety and Health Program for Public Employees.

Will All of the OSHA Standards Apply? Yes.

Can OSHA Inspect My Workplace? No. Inspections are conducted by DLS.

Will my Agency be Fined for Violating OSHA Standards? The goal of the law is to prevent work-related injuries and illnesses. During the transition for the new law, DLS will issue a Written Warning and Order to Correct for conditions that could cause work-related injuries and illnesses. There are no fines issued when the Written Warning and Order to Correct is satisfied.

Is My Agency Required to Notify DLS When There is a Work-Related Accident?

Each agency should continue to follow the procedures established by your own workers' compensation coordinator. DLS requires immediate notification when there is an amputation, loss of an eye, fatality or inpatient hospitalization. Contact 508-616-0461. A poster with this requirement is available at www.mass.gov/dols/wshp.

When Will My Agency be Inspected? DLS will prioritize inspections according to risk. Agencies with high injury rates will be inspected before agencies with low injury rates. DLS does not make surprise inspections – an appointment will be scheduled with the Agency Manager.

Is There an “OSHA Poster” for State Agencies? A poster explaining employer and employee rights is available at www.mass.gov/dols/wshp. The poster applies to all public sector workplaces in Massachusetts.

How Will OSHA Standards be More Stringent than What We Had Before? In some agencies 454 CMR 25 may not be more stringent and in others it will. The regulation creates a consistent baseline of safety and holds agencies accountable to ensure that safe equipment is available, inspected and used properly. If equipment, procedures or training is faulty or missing, it needs to be corrected.

If Workplaces are Required to Comply with OSHA, How are “Workplaces” Defined? A workplace is anywhere that an employee performs job duties. M.G.L. c. 149 §1 defines “place of employment” as every place, whether indoors or out or underground and the premises appurtenant thereto, into, in or upon which any employee goes or remains either temporarily or regularly in the course of his employment. For many state employees, their office building will be their workplace. However, some state employees conduct tasks that are not at a fixed worksite, such as elevator inspection or environmental testing. Their respective agencies will be expected to have equipment and programs to keep their employees safe at all locations where job duties are performed.

Are State Employees Covered When Traveling from Point A to Point B During the Day? State employees are covered when traveling is part of their job duties. Commuting to and from home prior to the start and after the end of the workday is generally not covered. Motor vehicle accidents that occur during performance of job duties are considered work-related accidents. However, the employer is not responsible for road conditions. Similarly, if an employee is injured while walking on a sidewalk the agency would need to record the injury on their OSHA 300 log (as performed by workers’ compensation agents), but would not be responsible for fixing the sidewalk.

Are Temporary and Contracted State Employees Covered? M.G.L. c. 149 §6-1/2 applies to workplaces covered by the law. There is no distinction between full-time, seasonal, part-time or temporary workers. There is no distinction between union and non-union employees. If a contracted employee is an employee of a private sector company, they are not covered by the new law because they are covered by federal OSHA.

Should Agencies Follow OSHA Haz Com or Right-to-Know? Agencies that are covered by 454 CMR 25 must follow the OSHA Hazard Communication standard. Municipalities, counties and state agencies that are not covered by the new OSHA Law are required to comply with Right-to-Know. The Right-to-Know Law was written before the OSHA regulation. Note that if a

municipality, county or state agency has an effective OSHA Hazard Communication Program, then DLS will consider them to be in compliance with the Right-to-Know Law.

Do Offices Have to Update Ergonomic Design of Equipment? The new law requires employers to provide a safe workplace – this means providing adequate equipment to perform job duties. Most offices have adequate office workstations. However, some workstations are not adequate and steps should be taken to reduce injuries. Department Managers, ADA Coordinators and union representatives can contact DLS for assistance. Depending upon the results of the evaluation, an equipment update may, or may not, be required.

The proposed regulations note a requirement for record-keeping, including exposure to toxic materials. How are toxic materials defined? The record-keeping requirements are for work-related injuries and illnesses. This means that if an exposure to a toxic material required medical treatment beyond first aid or caused an employee to lose more than that day of work, it should be recorded. Examples of incidents involving toxic materials include work-related asthma attacks, chemical rash and lead poisoning. A toxic material means any chemical substance, biological agent (bacteria, virus) or physical stress (noise, radiation) in which there is evidence of an acute or chronic health hazard. It may be noted that M.G.L. c. 111F, Hazardous Substances Disclosure by Employers, and its regulation at 454 CMR 21.00, also has record-keeping requirements that apply to the Commonwealth.

What are the benefits of this law: The law is expected to reduce the number of work-related injuries. The injury rate for Massachusetts executive branch agencies is 60% higher than other states that follow OSHA standards. An extra benefit to the state is that when the number of work-related injuries is reduced, the money spent by the state on medical and workers compensation costs should be reduced.

What Should My Agency Be Doing Now? Use your workers compensation data and the results of your agency's EO511 Gap Analysis to prioritize safety programs.

Where Can I Get Sample Programs?

Sample programs are posted at www.mass.gov/dols/wshp and on the state wiki site called MESHARE (Massachusetts Employee Safety & Health Assistance Resource Exchange) <https://wiki.state.ma.us/confluence/display/meshare>.

Does My Agency Still Need a Safety Committee? Yes!

Need Help? Visit www.mass.gov/dols/wshp, email safepublicworkplace@state.ma.us, or phone 508-616-0461.